

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioner received Food Stamps for herself and her daughter through January 2003.
2. The petitioner admits that at least as of June 2002 the father of her daughter has been staying in her home at least half time. Depending on his work schedule he alternates between three and four nights a week in the petitioner's home. The rest of the time he stays with his parents.
3. Following an investigation, in January 2003 the Department notified the petitioner that she was no longer

eligible for Food Stamps because it had determined that the father was a member of her household and that his income made the household (of three persons) ineligible for this program. The petitioner does not dispute that if the father's income is counted the household's income is in excess of the program maximum.

4. In addition, the Department notified the petitioner that she had been overpaid \$1,936 in Food Stamps from June 2002 through January 2003 due to her "inadvertent error" in not reporting the father's income during this period. Again, the petitioner does not contest the mathematical bases of the Department's decision.

5. Although the father has been steadily employed, the petitioner does not charge him rent and she has not sought any child support from him. When he is staying in the petitioner's home he eats his meals with the petitioner and her daughter. The petitioner does not allege that the father pays any rent to his parents. It is not clear whether the father uses the petitioner's or his parents' address as his mailing address.

6. The petitioner concedes that she has not sought RUFA benefits from the Department since those benefits were closed for another reason in August 2002. Other than a desire on his

part to "save expenses", the petitioner offered no reason or explanation for the father's living arrangements.

ORDER

The Department's decisions are affirmed.

REASONS

Food Stamp Manual § 273.1(a)(2) provides that parents "living with" their children must be considered members of their children's Food Stamp households, and their income and resources must be considered in determining the household's eligibility. Although the regulations do not specify an amount of time a parent must spend in his child's household to be considered "living with" them, this determination is usually based on whether the parent in question uses his children's home as his primary residence. In cases of unusual or potentially-contrived living situations the Board has held that the petitioner bears the burden of proving that a claimed "separation" is actual and legitimate. See e.g., Fair Hearing No. 6461 (aff'd, Hall v. Dept. of Social Welfare, 153 Vt. 479 [1990]).

In this case, the petitioner concedes that the father is present in her home, including meals and sleeping, at least half of the time, and that he pays no rent or child support to

her.<sup>1</sup> Moreover, he pays no rent anyplace else. Therefore, even though the father stays in his parents' home about half time, and even if he uses their mailing address, it must be concluded that his primary residence is in the petitioner's home. Therefore, the Department's determination that he has been a member of the petitioner's Food Stamp household since at least June 2002 must be affirmed.

Under the federal Food Stamp regulations as adopted by the State of Vermont, the Department of PATH is also required to establish a claim against any household that has received Food Stamp benefits to which it was not entitled regardless of whether the household intentionally caused the overpayment. F.S.M. 273.18(a). The Department is required to recalculate Food Stamps based on the correct information regarding the household's actual income and expenses and to establish a claim for any amounts that were overpaid during the previous twelve months. F.S.M. § 273.18(c).

The regulations further require the Department to recoup such overpayments if and when the household continues to participate in the program. In such cases, the Department is

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<sup>1</sup> In the absence of any claim or showing by the petitioner to the contrary, it is assumed that she has eschewed applying for RUFA benefits because the father, in fact, provides financial support to her and her child, and she does not want to be required to officially pursue child support from him.

required to collect outstanding amounts by reducing the household's monthly food stamp allotments. F.S.M. 273.18(f). In most cases the amount to be collected by this offset is the greater of \$10.00 or ten percent of the total monthly food stamp allotment. F.S.M. §§ 273.18(f)(1)(iii).

Inasmuch as there is no indication in this matter that the Department has not followed its regulations regarding the calculation of the petitioner's overpayment, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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